

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

UNITED STATES OF AMERICA,

Plaintiff,

v.

MICHAEL D. SCATES,

Defendant.

ORDER

08-cr-27-bbc

Defendant Michael Scates has filed a motion for reduction of his sentence in reliance on a bill filed in the House of Representatives, H.R. 3245, on July 16, 2009. The bill is entitled "Fairness in Cocaine Sentencing Act of 2009" and would eliminate certain increased penalties for cocaine.

In his motion, defendant asks for resentencing under Kimbrough v. United States, 552 U.S. 85 (2007), taking into account the policies expressed in H.R. 3245. However, in an accompanying letter, he acknowledges that the bill has yet to become law and requests that his motion be suspended until legislation is enacted.

As defendant recognizes, his motion for reduction of sentence is premature. (He has no claim for resentencing under the 2007 change in the Sentencing Guidelines because he

was sentenced after that change took effect and had the benefit of it.) I decline to hold it in abeyance until some outside event occurs. If the legislation should be enacted and if it is made retroactive to cases in which sentences have been imposed, defendant will be free to re-file his motion, bring it up to date and tailor it to the specific provisions of the legislation.

ORDER

IT IS ORDERED that defendant Michael D. Scates's motion for reduction of his sentence is DENIED as premature. His request to hold his motion in abeyance until legislation is enacted to further reduce the sentencing disparities between cocaine and cocaine base is DENIED as well.

Entered this 20th day of November, 2009.

BY THE COURT:
/s/
BARBARA B. CRABB
District Judge